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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-616

HOLLYWOOD, INC., a Florida Corporation,
Petitioner,

vs.

CITY OF HOLLYWOOD, a Municipal Corporation
of Florida,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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INTRODUCTION

This case has now been pending for over 13 years. Petitioner has seized upon every possible opportunity to delay final adjudication. As will be seen below this is another such attempt.

JURISDICTION

Petitioner claims jurisdiction because of an alleged denial of due process by having to submit to jury trial in Broward County, Florida. Respondent is one of 29 incorporated cities located within Broward County.

Respondent-City submits that there are no such jurisdictional bases for this petition. Trial has not yet commenced. Petitioner has not exercised its preemptory challenges and challenges for cause. There is nothing in the record to even remotely suggest that petitioner cannot receive a fair trial and due process by trial by jury in Broward County, Florida.

STATUTORY PROVISION INVOLVED

Chapter 40 of the Florida Statutes contains certain provisions relating to juror qualifications. Florida Statute 40.07 entitled "Persons Disqualified" provides in part:

(4) BY INTEREST IN THE SUBJECT MATTER OF THE CAUSE.—No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state, or such county or municipal corporation.

Contrary to the allegations in petitioner's brief, this statute does not permit residents "with an interest in the outcome of a case to be jurors." It simply provides that the fact of mere residence, standing alone, does not constitute a grounds for challenge for cause. Obviously, if for any reason a juror indicates a bias, prejudice or inter-

est in the outcome so as to be unable to fairly try the issues, the trial court should and presumably will follow the law and excuse that juror.

PROCEEDINGS BELOW

Respondent-City initially timely requested a jury under the Florida Rules of Civil Procedure on February 3, 1970 before filing its amended answer. That request, as well as additional pre-trial requests were all denied.

Those denials became one of the points involved in post-trial appeals. Ultimately the Supreme Court of Florida ruled that the Respondent-City was entitled to trial by jury. *Hollywood, Inc. v. City of Hollywood*, 321 So.2d 65 (1975).

Following that decision the Petitioner began a series of maneuvers designed to allow it to raise eight so-called "affirmative defenses." The first of those so-called "defenses" was that Florida Statute Section 40.07 was unconstitutional.

Petitioner first sought permission to amend from the Florida Supreme Court. Since the application was not authorized by any rule of court, it was rejected.

Petitioner then filed a motion to amend with the trial court. Since all of the true affirmative defenses had been already considered in the appellate courts* that motion was denied. Thereafter on October 29, 1976, the Fourth District Court of Appeal of Florida affirmed that order. *Hollywood, Inc. v. City of Hollywood*, 339 So.2d 1190 (Fla. 4th DCA 1976). And on May 17, 1977, the Florida Supreme Court denied a writ of certiorari, *Hollywood, Inc. v. City of Hollywood*, 348 So.2d 948 (Fla. 1977).

**City of Hollywood v. Zinkil*, 283 So.2d 581 (4th DCA 1973); *Hollywood, Inc. v. City of Hollywood*, 321 So.2d 65 (Fla. 1975).

QUESTIONS PRESENTED

Whether a statutory provision that city residents are not automatically disqualified from jury service denies due process in advance of any effort to select a jury.

REASONS FOR DENYING THE WRIT

Respondent-City is one of 29 cities within Broward County, Florida. This case is scheduled for trial in the Circuit Court in and for Broward County. Prospective jurors are drawn from throughout Broward County. There is nothing in the record to suggest that there will be any prospective jurors who are residents of the Respondent-City. Indeed, all prospective jurors may very well come from the other 28 cities or unincorporated areas of Broward County.

There is also nothing in the record to suggest that the trial judge will not follow the law and excuse any juror who has an interest in the case that will prevent that juror from being a fair and impartial juror.

This "contention" is not timely raised since it was never raised by petitioner in connection with any of the several applications of the Respondent-City for a jury trial. Indeed, it was not raised until after the Supreme Court of Florida ordered a jury trial in the Circuit Court in and for Broward County.

Note must also be taken of the fact that the proper remedy for an alleged prejudicial forum is a motion for change of venue. No such motion has been made in this case.

CONCLUSION

WHEREFORE, for the above reasons, the Respondent-City respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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